From: Bob Wieman
To: Microsoft ATR
Date: 1/27/02 2:32am
Subject: Microsoft Settlement

Let me make clear at the first that I do not agree with the proposed final judgement as it stands.

I would point out two issues:
The definition of future Microsoft middleware products, outside those that have the same functions as the current Microsoft middleware products, requires that Microsoft has distributed the product separate from the operating system. If Microsoft developed a product to replace a non-Microsoft middleware product, and released it only with the operating system (potentially, the new OS release could just be inclusion of the product), this product would not qualify as a Microsoft Middleware Product, and therefore would not be subject to the access requirements of Section III.H.1, or the substitution of automatically launched middleware of Section III.H.2.

Effectively, the commercial viability of a non-Microsoft Middleware Product is given a time horizon, determined by Microsoft, of the next OS release. At that point, Microsoft can implement a competing API, not bound by these subsections and therefore not necessarily removable or replaceable. A non-Microsoft Middleware Product in this situation will not pose the threat to the OS monopoly that it would have, absent this behavior by Microsoft to illegally maintain its monopoly.

To repeat, the definition of Microsoft middleware products in the proposed final judgement is overly narrow, and therefore the proposed final judgement does not prevent the recurrence of one of Microsoft's exclusionary acts: the integration of a product competing with non-Microsoft middleware into Windows in a non-removable way. The result would be an ever-expanding operating system, taking unto itself any functionality provided by competing middleware, to ensure that no competing middleware could claim usage share wide enough to erode the operating system monopoly.

Secondarily, the question of whether 'tying' a (non-monopoly) product to a monopoly is itself anticompetitive under Section 1 of the Sherman Act is a question that I think strikes at the core of people's intuition regarding antitrust law, and a resolution of the question is in the public interest. Not only might the resolution modify the appropriate remedy in this case, but a precedent would be set to measure the behavior of this and other monopoly-holding corporations by.

To sum up: I do not believe that this proposed final judgement prevents a recurrence of the illegal behavior it seeks to remedy. Further, I feel that disregarding the most interesting question of law does not

serve the public interest. The people need to know if legislation is required to conform the law to our intent, and monopoly-holding corporations need to know what they may or may not do.

Thank you for your consideration.

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